

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	Chapter 7
AOK CONSTRUCTION, LLC,	§	Case No. 09-34419
Debtor	§	
KIRBY-SMITH MACHINERY, INC.,	§	
Plaintiff,	§	
v.	§	
AOK CONSTRUCTION, LLC and CONTINENTAL ENERGY SERVICES,	§	Adversary No. 09-03406 Civ. Case No. CJ-2009-3493
Defendants.	§	
-and -	§	
BANK OF AMERICA, N.A.,	§	
Intervenor.	§	

AFFIDAVIT OF PATRICK G. HONEY

STATE OF TEXAS
COUNTY OF DALLAS

BEFORE ME the undersigned authority, on this day personally appeared Patrick G. Honey, who is personally known to me and who after being first duly sworn according to law upon his oath deposed and stated as follows:

I. My name is Patrick G. Honey. I am over eighteen (18) years of age and have never been convicted of a felony or crime involving moral turpitude. The statements made by me in this Affidavit are true and correct and are based upon my personal knowledge, unless

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otherwise stated. This Affidavit is submitted in connection with BOA's *Amended Motion to Quash Prejudgment Garnishment and Brief in Support of the Amended Motion*.

2. I am a Senior Vice President of Bank of America, N.A. ("BOA"). BOA is the successor to LaSalle Bank National Association ("LaSalle") as administrative agent and as one of the lenders in connection with a senior secured credit facility (the "Loan"), governed by the terms of an Amended and Restated Credit Agreement, dated as of March, 3, 2008 (the "Credit Agreement"), by and between Continental Energy Services, LLC ("CES"), as borrower, LaSalle, as administrative agent, issuing lender, and lender, and Amegy Bank National Association ("Amegy") and Compass Bank ("Compass"), as lenders. The Credit Agreement was executed as an amendment to and restatement of an existing senior secured credit facility evidenced by Credit Agreement dated March 9, 2007, by and between LaSalle, as administrative agent, issuing lender, and lender, CES, as borrower, and Compass and Amegy. The credit facility, which is the subject of the Credit Agreement, consists of existing and future indebtedness under term loans and revolving loans up to an aggregate principal amount of \$47,500,000.00 (the outstanding amount of such indebtedness is referred to herein collectively as the "Indebtedness"). As of June 26, 2009, the total amount of the Indebtedness was \$31,413,701.10.

3. I am one of the officers at BOA charged with monitoring and collecting the Loan, and I am familiar with the Loan, the documents for the Loan, the collection efforts by BOA to date and the outstanding amount of Indebtedness.

4. BOA agreed to allow CES and its affiliates to sell a portion of the collateral securing the Indebtedness in a public auction on May 19, 2009, provided that all of the net proceeds of such auction were paid to BOA to be applied to the Indebtedness. CES, with BOA's consent, engaged Ritchie Bros. Auctioneers, Inc. ("Ritchie Bros."), an internationally known

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auction company, to advertise the auction and to conduct the auction. Upon information and belief, the property sold at the May 19, 2009 sale consisted primarily of equipment owned by CES's subsidiaries, AOK Construction, LLC ("AOK"), and Continental Energy Leasing LLC. Upon information and belief, with the exception of approximately nine vehicles which are subject to a first lien held by First National Bank of Kansas and the proceeds from the sale of which were paid to First National Bank of Kansas, all of the property sold was BOA's collateral which secured the Indebtedness pursuant to the terms of the Security Agreement. Upon information and belief, approximately one half the property being sold at the May 19, 2009 auction was property owned by AOK and the remainder was owned by Continental Energy Leasing LLC; no property of CES was sold at the May 19, 2009 sale.

5. On May 1, 2009, Kirby-Smith Machinery, Inc. ("Kirby-Smith") filed a Notice of Prejudgment Garnishment in Oklahoma state court and later obtained an order authorizing garnishment of the proceeds from the May 19, 2009 auction. BOA was forced to file a motion to intervene in this action in order to protect its right to the proceeds from the sale of its collateral. After BOA's intervention in the state court proceeding in which Kirby-Smith sought garnishment of the proceeds from the May 19, 2009 auction, BOA and Kirby-Smith agreed that the Garnished Proceeds (total amount of \$783,000) would be held in a segregated account at BOA pending further order. The Garnished Proceeds are currently held in a segregated account at BOA pending further order.

6. Through November 30, 2009, BOA has incurred \$55,200.97 in attorney's fees and related costs in intervening in Kirby-Smith's garnishment action, litigating the removal and transfer issues after AOK's bankruptcy filing, and pursuing its rights to the Garnished Proceeds under its security interest.

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DECLARATION

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

SIGNED this 7 day of December, 2009.

PATRICK G. HONEY

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